

Date: JAN 5 1991

Key District:

Chicago

Year(s):

1988

Person to Contact:

Contact Telephone Number:

Dear Sir(s):

We considered your appeal of the adverse action proposed by your key District Director. The paragraph(s) checked below indicate(s) our decision.

☒ Your exemption from Federal income tax under Section 501(c)(6) of the Internal Revenue Code is:

☐ confirmed.

☐ modified. A new determination letter is enclosed.

☒ denied or ☐ revoked. You are required to file Federal income tax returns on Form 1120 for the above years. You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for extension of time is granted.

☐ You are not a private foundation because you are described in Code Section(s) _____.

☐ You are an operating foundation as described in Code Section 4942(j)(3).

☐ You have no liability for excise taxes under IRC _____ for the above years.

☐ Your liability for excise taxes under IRC _____ for the above year(s) was properly reported on your return(s).

☐ There is no change to your unrelated business income tax liability as reported for the above years.

☐ Your Form(s) 990-T for the above years are accepted as filed.

☐

You may direct questions about the decision to the appeals officer whose name and telephone number are shown above.

Sincerely yours,

[Redacted Signature]

Acting

Associate Chief

Letter 1370(R0)(1-60)

SUPPORTING STATEMENT

Taxpayer: [REDACTED]

Year: [REDACTED]

I. & II. ISSUE AND PROPOSAL FOR SETTLEMENT:

1. Whether the taxpayer is an organization exempt from tax under Section 501(c)(6) of the Internal Revenue Code.

1(a). That the Government concede.

The taxpayer's proposal is unacceptable for reasons hereinafter stated.

III. & IV. FINDINGS OF FACT AND LAW AND ARGUMENT:

Findings of Fact

The taxpayer was incorporated under the general Not-For-Profit Corporation Act of [REDACTED] on [REDACTED]. An application for Recognition of Exemption, Form 1024, filed by the taxpayer was received on [REDACTED]. The taxpayer filed for exempt status under IRC Section 501(c)(6) as a business league.

[REDACTED] is a membership organization. Any entity which is a [REDACTED] software license holder is a member of [REDACTED]. [REDACTED] software is manufactured by [REDACTED]. To become a license holder, you must make an initial purchase of the [REDACTED] software and/or sign up for monthly/yearly maintenance of the [REDACTED] software. This software is used in hospital systems for various functions including clinical and administrative.

[REDACTED] also publishes a quarterly newsletter whose typeface has [REDACTED] in [REDACTED] background. The newsletter has a column called [REDACTED], where "[REDACTED] users can ask questions, voice concerns, share tips, and generally disseminate information to other [REDACTED] users." Also in the newsletter, [REDACTED], [REDACTED], Vice President, [REDACTED] had a column on new developments of [REDACTED].

[REDACTED]'s By-laws, Article II state that its "primary objective is to advance the effective usage of [REDACTED] software and hardware provided by [REDACTED]. In notes to the Financial Statement on [REDACTED] it states, "[REDACTED] is organized exclusively for educational purposes to advance the effective use of [REDACTED] (effective [REDACTED], name changed to [REDACTED]) software and hardware."

There are two conferences held during the year in Spring and Fall. These are held in conjunction with [REDACTED], a separate organization from [REDACTED], which uses [REDACTED] software. The Spring '89 conference brochure states the attendees at the conference are employees of institutions which hold [REDACTED] or [REDACTED] software licenses, their spouses, guests and [REDACTED] employees. In listing the various activities available, there is a One-on-One

Session where [REDACTED] representatives will be available to answer questions, clarify communication channels and otherwise interact with attendees. The objective is to enhance communication and strengthen individual relationships with [REDACTED] management. The opening speaker at this conference was [REDACTED], President of the Systems Division of [REDACTED]. He was also a speaker at the Fall, [REDACTED] conference.

[REDACTED] has the complete mailing list for [REDACTED]. [REDACTED] mails out all information going to all the members, i.e. newsletter, conference notices, etc. In addition, a [REDACTED] employee makes the initial site visit for conference location, i.e. hotel accommodations, facility. [REDACTED] handles the negotiations for the hotel, various discounts on auto, plane, etc. [REDACTED] makes the payment for the conference expense and [REDACTED] reimburses them.

A member of the [REDACTED] Board of Directors' who is an employee of [REDACTED], who acts as a liason from [REDACTED] who has no vote but provides answers on technical questions and gives an idea of future activities on the software.

Per the financial statements, as of [REDACTED], [REDACTED] had an Accounts Payable balance of \$[REDACTED] to [REDACTED] and as of [REDACTED], there was an Accounts Payable balance of \$[REDACTED] to [REDACTED] (was [REDACTED]). [REDACTED] donated goods and services of \$[REDACTED] from [REDACTED] through [REDACTED]. This represented [REDACTED]% of their total receipts for that period.

Law and Argument

IRC Section 501(c)(6) provides for the exemption of business leagues which are not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(6)-1 states that a business league is "an organization of the same general class as a chamber of commerce or board of trade," and that a tax exempt business league's activities "should be directed to the improvement of business conditions of one or more lines of business".

The Supreme Court in National Muffler Dealers Association, 79-1 USTC 9264 upheld the validity of above regulation, a organization to be exempt under IRC Section 501(c)(6) should improve the business conditions of one or more lines of business. The Court stated,

"Those who have failed to meet the 'line of business' test, in the view of the Commissioner, include groups composed of businesses that market a single brand of automobile, or have licenses to a single patented product, or bottle one type of soft drink.

In short, while the Commissioner's reading of IRC Section 501(c)(6) perhaps is not the only possible one, it does bear a fair relationship to the language of the statute, it reflects the views of those who sought its enactment, and it matches the purpose they

articulated. It evolved as the Commissioner administered the statute and attempted to give to a new phase a content that would reflect congressional design. The regulation had stood for 50 years, and the Commissioner infrequently but consistently has interpreted it to exclude an organization like the Association that is not industrywide. The Commissioner's view therefore merits serious deference.

In sum, the "line of business" limitation is well grounded in the origin of IRC Section 501(c)(6) and in its enforcement over a long period of time. The distinction drawn here, that a tax exemption is not available to aid one group in competition with another within an industry, is but a particular manifestation of an established principle of tax administration.

The Supreme Court upholds the Commissioner's interpretation of the regulation, supporting the line of business requirement.

The National Muffler Dealer Association had only Midas Muffler franchises as members. Its efforts were directed to the working relationship of the Midas dealers and Midas, the franchisor.

The 2nd Circuit Court of Appeals in hearing the National Muffler Dealer Association's appeal concluded as follows:

"Applying the "line of business" requirement with a sensitivity to the general considerations which underlie it, we have little difficulty in concluding that the Association does not merit an exemption. First, the Association does not draw its franchise members from a broad base. Indeed, all bear a well-defined business relationship to a single private firm-Midas International Corporation. Also, the Association's activities reflect its limited constituency. It has endeavored solely to serve the interests of Midas dealers in their day-to-day dealings with their franchisor. The bulk of the muffler industry, in short, is excluded. To the extent that the Association is successful in improving conditions for its members, it does so partially at the expense of non-Midas dealers, who will find themselves facing stronger competition.

National Prime Users Group (NPUG) was an organization originally organized "to engage in any lawful business and trade practices; to provide an organized method of communication among users of Prime Computer, Inc. Equipment and to provide an organized method of communication between the users and the vendor"...

Membership in NPUG was limited to "an organization, institution, or individual that has purchased, leased, uses or has on order a computer manufactured by Prime Computer, Inc."

NPUG held an annual conference which included exhibits of Prime computers

and services and hospitality suites where Prime representatives were there to discuss matters relative to Prime computers.

The District Court, National Prime Users Group, 87-2 USTC 9492, concluded that NPUG did not meet the "line of business" test; it noted the following:

"At the outset, the Court cannot overlook the name of the organization and the obvious implication that NPUG is an association organized for users of Prime products... NPUG was an organization serving only segments of a line of business, those using Prime products...the Court must look to all of the circumstances of NPUG, including the primary objective of the corporation, its activities, and its membership...the Court finds that NPUG has endeavored to serve solely the interest of Prime through NPUG's activities. The purpose of NPUG, as set forth in the original articles of incorporation and by-laws...and as evidenced from the consistent activities of the organization since its inception, is to provide information to and communication among users of Prime equipment. The organization does not serve an entire industry or all components of an industry within a geographic area".

The denial letter stated that [REDACTED] did not meet the line of business requirement and it cited National Prime Users Group, supra and Revenue Ruling 83-164, 1983-2 C.B. 95. In Revenue Ruling 83-164, supra, an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption from Federal Income Tax as a business league under Section 501(c)(6).

The protest letter states that some of the vendors at the conferences held are not affiliated with [REDACTED]. At meetings of [REDACTED], speakers give presentations relating to the health industry as a whole not just the [REDACTED]. By allowing third parties to participate at its product fairs and engaging speakers from outside the [REDACTED], [REDACTED] feels that it differentiates itself from the NPUG, supra, and Revenue Ruling 83-164, supra, and meets the "line of business" test.

It is conceded that there are outside speakers and vendors present at [REDACTED]'s meetings, however as the District Court stated in National Prime Users Group, supra, we must look at all the circumstances of the organization including primary objective, activities and membership. Their primary objective as stated in their organizational documents and other documents including their financial statements is to advance the effective use of [REDACTED]. The majority of its activities are related to [REDACTED]; a [REDACTED] liason on the Board of Directors, newsletter has various informative articles on [REDACTED] speakers, exhibitors at conferences. The membership is limited to institutions using [REDACTED] software.

It is apparent that the facts in this case are closer to the facts in National Prime Users Group, supra.

V. CONCLUSION:

The taxpayer's proposal for settlement was unacceptable for the aforementioned reasons. The taxpayer will be issued an unfavorable ruling as to its exempt status.

Person to Contact: [REDACTED]
 Telephone Number: [REDACTED]
 Refer Reply to: [REDACTED]

Date: JUN 13 1989

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(6) of the Internal Revenue Code.

The information submitted discloses that you were incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED].

According to your Application Form 1024, your principal objective is to advance the effective usage of [REDACTED] software and hardware provided by [REDACTED]. Any entity which is a [REDACTED] software license holder can be a member of your association.

The primary activity of your organization is semi-annual meetings. These meetings assist your members in keeping breast of the most recent developments and improvements in the use of the [REDACTED] software and hardware. Your primary source of income is membership dues and conference registration fees.

Section 501(c)(6) of the Internal Revenue Code provides for exemption of "business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Date	1/9/89	6/9/89	6/9/89	6/9/89			

Section 1.501(c)(6)-1 of Income Tax Regulations reads as follows:

"BUSINESS LEAGUES, CHAMBERS OF COMMERCE, REAL ESTATE BOARDS AND BOARDS OF TRADE. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable upon their unrelated business taxable income. See sections 511 to 515, inclusive and the regulations thereunder".

Revenue Ruling 83-164, 1983-2 C.B.95, stated that an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption from Federal Income Tax as a business league under Section 501(c)(6) of the Code.

In National Prime Users Group, Inc. V. United States of America, 60 AFTR 2d 87-5564 (D. Md. 1987) the court held that an organization which was operated for the purpose of providing information to and communication among the users of a particular brand of minicomputer was not a tax-exempt business league because its activities served the interest of that single manufacturer and only improved the segments of the lines of business that are represented by its members.

Your organization is similar to the ones mentioned in Revenue Ruling 83-164 and National Prime Users Group Inc. V. U.S. in that you are directing your activities to the users of one particular brand of computer software and hardware. By doing so, you are improving the business condition in only the segments of business that your members represent. In addition, your activities are serving the interest of [REDACTED] by providing a competitive advantage to it and its customers. You are, therefore, not improving the conditions of one or more lines of business within the meaning of Section 501(c)(6) of the Code.

[REDACTED]

We have concluded that you do not qualify for exemption from Federal Income Tax as an organization described in Section 501(c)(6) of the Internal Revenue Code. Accordingly, you are required to file Federal income tax returns on Form 1120, annually with your District Director.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If we do not hear from you within 30 days from the date of this letter this determination will become final.

You are required to file Federal Income Tax Returns.

Please keep this determination letter in your permanent records.

If you agree with this determination please sign and return the enclosed Form 6018.

Very truly yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018